

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

In re Application	:
	:
HWANG, <i>et al.</i>	:
	:
Serial No. 09/738,656	: Examiner Lien Tran
	: Art Unit 1761
Filed December 15, 2000	: Facsimile No. (703) 872-9310
	:
For: COOKIES WITH IMPROVED SHELF	:
LIFE AND PROCESS FOR	:
PREPARING THEM	:

Assistant Commissioner for Patents
Washington, D.C. 20231

Substitute Brief on Appeal

Sir:

This Brief on Appeal is filed in triplicate in response to the Notification of Non-Compliance with 37 CFR 1.192(c) mailed January 9, 2006.

This Brief is filed in triplicate.

Appellants request an Oral Hearing.

1. Real Party in Interest

The real party in interest is Kraft Foods Holdings, Inc.

2. Related Appeals and Interferences

There are no related appeals or interferences.

3. Status of Claims

Claims 1-25 are pending in this application.

Claims 1-25 are under appeal.

No claims have been allowed.

4. Status of Amendments

No amendments have been offered after the final rejection. An Appendix at the end of this Brief presents clean copies of the appealed claims, including those amended.

5. Summary of Claimed Subject Matter

There are a total of six independent claims (1, 8, 15, 19, 21 and 23). Of these, three (1, 15 and 21) are process claims and three (8, 19 and 23) are product claims.

Each of these claims define the invention from different perspectives, which are based on the recognition of the invention that aromas that provide a perception of freshness in a cookie can be renewed during storage of cookies to replace those lost due to the passage of time.

a. Process Claims

Claim 1 calls for a process for preparing cookies containing chips in a basecake which is subject to diminished fresh flavor after storage, the cookies being formulated to have an extended shelf life. (See page 5, lines 14-19) The claimed process includes two basic steps:

First, a cookie dough is prepared for baking into a basecake. (See page 5, lines 15-16)

Then, a mixture of chips is added to the dough mixture. The chips comprise sugar in a fat matrix. Important to the invention is the provision that *at least some of said chips are enhanced flavor chips* comprising at least one added flavor composition which extends fresh-baked cookie flavor otherwise diminished by storage in a concentration greater than present in the basecake and other of said chips, to supply to the basecake during storage over time at least one flavor composition effective to extend freshness perception for the cookie basecake. (See, for example, page 5, lines 16-24; page 10, lines 1-11)

Claim 1 and the other independent claims emphasize this new technology and distinguish it from the old art of recipe adjustment. The various independent claims define the invention from a number of different perspectives, but each is specifically directed to extending freshness as opposed to simply providing for flavor variety. The emphasis of the independent claims is on freshness retention, and not simply the related, preferred inventive concept of facilitating this through the use of flavor chips of different sizes.

Claim 1 specifically calls for providing chips having “at least one added flavor composition which extends fresh-baked cookie flavor otherwise diminished by storage in a concentration greater than present in the basecake and other of said chips, to supply to the basecake during storage over time at least one flavor

composition effective to extend freshness perception for the cookie basecake". (See, for example, Abstract, page 2, lines 23+)

The other independent process claims (Claims 15 and 21) also bring out this important feature of the invention. Appellants emphasize that throughout the application description, freshness stabilization is the central concern. Indeed, the first stated object of the invention (page 4, lines 23+) states: "it is an object of the invention to provide a process for stabilizing cookie flavor and a cookie having the flavor stabilized such that the eating experience is less affected by storage times and conditions than when utilizing current technology."

Claim 15 is of similar scope to claim 1 in that it describes a two-step process for the same purpose and the first step is similar to that in claim 1. However, this claim defines numerically some of the preferred chip proportions and sizes found to provide the benefits of the invention. Specifically, the second step calls for:

adding to the dough a mixture of chips of different sizes, *at least 30% by weight of the chips* present in the dough *being small* and some larger chips, said larger chips being employed in an amount sufficient to provide a visual awareness that the cookies contain chips, said chips comprising sugar in a fat matrix, wherein the *smaller chips have a count per pound of greater than about 7,500 and the larger chips have a count per pound of less than about 7,500*, and at least some of said smaller chips are enhanced flavor chips comprising at least one added flavor composition in a concentration greater than present in the larger chips, said flavor comprising at least one member selected from the group consisting of buttery flavors, vanilla flavors, cream dairy flavors, caramel flavors, and other flavors associated with freshness, to supply to the basecake during storage over time at least one flavor composition effective to extend freshness perception for the cookie basecake.

The inventors are here describing preferred physical parameters that define success in preferred embodiments. (Page 8, line 24 through page 9, line 27)

Claim 21 also details a process for preparing cookies comprising a basecake, which is subject to diminished fresh flavor after storage, the cookies being formulated to have an extended shelf life, and sets out two steps: The first step in this claim notes that the dough contains at least one added flavor. The second step is keyed to this same flavor and provides for *small enhanced flavor chips comprising said at least one added flavor composition* in an amount effective to extend the shelf life of the cookie by migrating from the chip to the a base cake portion formed by baking the dough, to supply to the basecake during storage over time at least one flavor composition effective to extend freshness perception for the cookie basecake. (Page 10, line 1 through page 11, line 2)

Thus, the process claims are all definitive of the invention, but describe it in ways that uniquely capture a definitively novel aspect.

b. Product Claims

Claim 8 defines a cookie containing chips in a basecake, which is subject to diminished fresh flavor after storage, the cookies being formulated to have an extended shelf life. (See, for example, page 5, lines 16-24; page 10, lines 1-11)

Again there are two parts, which essentially are a baked cookie dough containing therein a mixture of chips of different sizes. Here as in claim 1, some small and some larger, said chips comprising sugar in a fat matrix, and at least some of said smaller chips are enhanced flavor chips comprising at least one added flavor composition in a concentration greater than present in the larger chips, to supply to the basecake during storage over time at least one flavor composition effective to extend freshness perception for the cookie basecake. (As above, and page 7, line 26 through page 8, line 8)

Claim 19 follows somewhat the format of process claim 15, reciting different preferred ranges for the chips. It states in this regard that

at least 10% by weight of the chips present in the dough being small and some larger chips, wherein said larger chips are employed in an amount sufficient to provide a visual awareness that the cookies contain chips, said chips comprising sugar in a fat matrix, wherein *the smaller chips have a count per pound of greater than about 7,500 and the larger chips have a count per pound of less than about 7,500*, and at least some of said smaller chips are enhanced flavor chips comprising at least one added flavor composition in a concentration greater than present in the larger chips, said flavor comprising at least one member selected from the group consisting of buttery flavors, vanilla flavors, cream dairy flavors, caramel flavors, and other flavors associated with freshness, and wherein *the weight ratio of the average weight of the smaller chips on a number average to the weight of the larger chips on a number average is from 1:2 to 1:25*, to supply to the basecake during storage over time at least one flavor composition effective to extend freshness perception for the cookie basecake. (As above and page 8, line 24 through page 9, line27)

Again here, the inventors are describing the physical things that define success in preferred embodiments.

Finally, claim 23 describes a cookie containing chips in a basecake, which is subject to diminished fresh flavor after storage, the cookies being formulated to have an extended shelf life. It recites:

a continuous cookie base cake having dispersed therein a mixture of chips of different sizes, some small and some larger, and at least some of said small chips comprising at least one flavor in a concentration greater than normally employed in flavor chips, to supply to the basecake during storage over time at least one flavor composition effective to extend freshness perception for the cookie basecake. (Page 10, line 1 through page 11, line 2)

6. Grounds of Rejection to be Reviewed on Appeal

- a. Claims 1, 8, 15, 19, 21 and 22 have been rejected under 35 U.S.C. § 112, first paragraph, for lack of support for the terms “a basecake, which is subject to diminished fresh flavor after storage” and “to supply to the basecake during storage over time at least one flavor composition effective to extend freshness perception for the cookie basecake”. The examiner states: “[t]here is no discussion of diminished flavor after storage and certainly no discussion of extending freshness perception”.
- b. Claims 1, 8, 15, 19, 21 and 22 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner states that the terms “freshness perception” and “fresh flavor” are indefinite because the scope of the claims cannot be determined from this language. The examiner asserts that the specification does not define these terms.
- c. Claims 1-25 have also been rejected under 35 U.S.C. § 103(b) as unpatentable over Haynes, *et al.*, in view of the “Original Chocolate Chip Cookies Recipes” reference (hereinafter, Cookies Recipes).

7. Argument

People, including those skilled in the art, have long known when a cookie has lost its freshness. When this happens the cookies are less desirable to eat. The invention has identified a technology capable of extending freshness. FIG. 1 is a graph schematically representing typical data taken to quantify the maintenance of significant flavor compositions from the base cake portion of a chocolate chip cookie stored at a range of ambient temperatures as time progresses. The data shows that flavors and aromas in the base cake portion of the cookies tend to dissipate or change relatively rapidly.

The invention is based on the research finding that the loss of freshness perception, which happens routinely during storage of commercially baked and distributed cookies, can be corrected by supplying flavor stores of freshness flavors to included chips for slow release.

The invention supplies freshness factors anew from the chips as freshness leaves the basecake. FIG. 1 depicts loss of flavor in the basecake portion of cookies over a storage period of eighty (80) days, a period of time which is well within the useful shelf life of commercially packaged cookies. FIG. 2 is a graph showing how the invention can correct this.

Tests discussed in the Specification at page 7, lines 4-10, show that about a third of the key vanilla flavor components may be lost from baked cookies in less than two months and about one half of key butter flavor components may be lost within a month, and a full 80% of the freshness aroma may be lost in as little as a week. The present invention, however, provides a reproducible technology for ameliorating this loss of freshness flavors. See, for example, Figure 2 which depicts the migration of a particular cookie flavor (vanilla) over a period of 26 weeks, from vanilla flavor enhanced chocolate chips into a cookie basecake. Through the technology of the invention, cookie freshness can be maintained.

A. The Specification Supports the Questioned Terms under the first paragraph of 35 USC §112.

Claims 1, 8, 15, 19 21 and 22 have been rejected under 35 U.S.C. § 112, first paragraph, for lack of support for the terms “a basecake, which is subject to diminished fresh flavor after storage” and “to supply to the basecake during storage over time at least one flavor composition effective to extend freshness perception for the cookie basecake”. Appellants specifically traverse the examiner’s statement that “[t]here is no discussion of diminished flavor after storage and certainly no

discussion of extending freshness perception". There is full and extensive support on this very point as noted above and further herein. The invention is definitely new and unobvious, and it is not without support in the description.

The invention is not recipe variation to accommodate mere whim. The invention is based on the research finding that the loss of freshness perception, which happens routinely during storage of commercially baked and distributed cookies, can be corrected by supplying flavor stores of freshness flavors to included chips for slow release. The invention supplies freshness factors anew from the chips as freshness leaves the basecake. Figure 1 depicts loss of flavor in the basecake portion of cookies over a storage period of eighty (80) days, a period of time which is well within the useful shelf life of commercially packaged cookies. See numbered paragraph [0003] in the published application which states:

FIG. 1 is a graph schematically representing typical data taken to quantify the maintenance of significant flavor compositions from the base cake portion of a chocolate chip cookie stored at a range of ambient temperatures as time progresses. These data are consistent with sensory evaluations. As used herein, the term "base cake" means the baked cookie dough crumb of a cookie and distinguishes it from any chips, nuts or other "inclusions" within the crumb.

Figure 2 is a graph showing how the invention can correct this. See numbered paragraph [0023] in the published application which states: "FIG. 2 is a graph showing that the migration of small concentrations of flavor from small chips (-●-) dispersed in the base cake portion of a cookie to the base cake portion, can stabilize the flavor of crumb portion..."

Throughout the application, appellants emphasize that freshness stabilization is the central concern. Indeed, numbered paragraph [0002] explains that freshness and flavor are closely related and there is a need to control flavor and aroma stability. It states:

Fresh home-baked cookies have desirable, balanced and near-optimal flavor and texture profiles. This freshly-baked character changes over

time, and the changes can be associated with staleness. Staleness in commercial cookie products can be related to a change in one or more of flavor, aroma and texture. Texture, especially for crisp cookies, can be adequately controlled for many recipes for reasonable time periods; however, flavor and aroma losses can be damaging to acceptance even where it is possible to stabilize textural changes. Unfortunately, flavor and aroma cannot be satisfactorily stabilized with known technology.

Then, in numbered paragraph [0003], it is explained that this connection between flavor and freshness was observed by appellants by testing freshly-baked cookies in the laboratory. The description states:

In an attempt to better understand the practical effects of these and possibly other mechanisms on the presence of flavors in cookies as time of storage progressed, applicant ran a series of tests on freshly-baked cookies analyzing them for important flavor components. FIG. 1 is a graph schematically representing typical data taken to quantify the maintenance of significant flavor compositions from the base cake portion of a chocolate chip cookie stored at a range of ambient temperatures as time progresses.

Again in the background, the description explains that initial flavor balance is lost – not all of the flavors equally – and that something unique had to be done to restore the flavor balance associated with loss of freshness perception. Numbered paragraph [0005] states in part:

While flavors can be initially balanced in freshly-baked cookies, they become progressively out of balance. For example, butter is a preferred shortening and provides pleasant flavor and aroma notes. Unfortunately, buttery flavor and aroma notes are significantly lost or diminished before the end of the desired shelf life. The simple addition of more butter flavor to the dough prior to baking is one possible solution, but adding amounts sufficient to last long periods can provide too strong of an initial flavor. Flavor addition in this manner is also an inefficient method because high flavor losses are associated with baking. Typically, flavor and aroma losses are pronounced for the base cake portion of a cookie, which is basically a mixture of aqueous phase ingredients. There is no known way to imbue cookies with fleeting flavors and aromas, like butter and vanilla, that will provide desirable near-optimum perceptions for freshly-baked cookies that will remain for storage-challenged products.

Then, the first stated object of the invention in numbered paragraph [0011], the inventors state: "... it is an object of the invention to provide a process for stabilizing cookie flavor and a cookie having the flavor stabilized such that the eating experience is less affected by storage times and conditions than when utilizing current technology."

Flavor and aroma are mentioned throughout the objects, and maintenance of freshness perception is directly tied to the invention and a problem that would be associated with a less inventive and less successful approach to the problem, namely the simple addition of more flavor to the base cake itself. The object in numbered paragraph [0013] states:

It is a more specific object of the invention to provide a cookie containing flavor chips which aid in the maintenance of freshness perception and do so without the creation of flavor "hot spots" and to provide a process for preparing it.

In numbered paragraph [0025], appellants specifically refer to tests that show that about a third of the key vanilla flavor components may be lost from baked cookies in less than two months and about one half of key butter flavor components may be lost within a month, and a full 80% of the freshness aroma may be lost in as little as a week. The present invention, however, provides a reproducible technology for ameliorating this loss of freshness flavors. See, again, for example, Figure 2 which depicts the migration of a particular cookie flavor (vanilla) over a period of 26 weeks, from vanilla flavor enhanced chocolate chips into a cookie basecake. Through the mechanism of the invention, cookie freshness can be maintained.

In the detailed description, in numbered paragraph [0027] appellants explain that their invention includes the use of small flavor chips with enhanced flavor levels to maintain freshness of flavor in cookie base cakes. The description states:

In another aspect, the invention supplies small enhanced flavor chips with high concentrations of added flavors to cookies (including those

not normally associated with chips) for the purpose of extending the shelf life of the cookies by maintenance of a fresh-baked cookie flavor.

The invention utilizes a mixture of small and large chips in its preferred aspects and meets the need for improved freshness retention in a manner never before described or made obvious by the art. In a discussion of the use of various chip sizes according to the invention, the description states in numbered paragraph 30, as follows:

Where chip perception is important, it is preferred that the smaller chips comprise at least 10%, e.g., at least 30%, by weight of the chips present in the dough and that the larger chips be employed in an amount sufficient to satisfy the consumers visual awareness that the cookies contain chips. ... The smaller chips, on the other hand, are subject to other criteria. For example, they should be there in sufficient number for uniform distribution throughout the crumb portion to achieve a measurable shelf life extension for the flavor of the cookies without creating flavor hot spots.

The description also describes a great number of flavors found to be associated with freshness. In numbered paragraph [0032], the description states:

Among the suitable added flavor compositions for the flavor chips employed according to the invention, are ... flavors associated with freshness. ... Other desirable flavors can comprise any other freshness notes ...

Extended freshness through flavor addition in a unique manner is at the heart of the invention. The specific means for achieving this is by adding extra flavor to small chips for controlled migration into the dough following baking. Numbered paragraph [0039] states in part:

The invention improves on the conventional dough compositions, however, by adding to the chips some of the same flavors (at least one) added to the dough for migration into the crumb portion during storage following baking to provide extended freshness perception.

Original claims fully brought out the intent of the invention regarding freshness. They did this by claiming the specific means adopted by appellants and

explained in their description, quoted above, and by specific reference to the term freshness in claims 6, 13, 15, and 19.

Appellants have thus pointed out how and where the description provides full and extensive support on the points said to lack support. The claimed invention is fully supported in the description.

B. The Claims Define the Invention in Terms That the Person of Ordinary Skill in the Art Would Readily Understand.

Claims 1, 8, 15, 19 21 and 22 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner's statements that the terms "freshness perception" and "fresh flavor" are indefinite because the scope of the claims cannot be determined from this language, are in error.

While appellants believe that the terms "freshness perception" and "fresh flavor" would be understood by those skilled in the art, appellants have provided the following discussion in paragraph [0032] of the description:

Among the suitable added flavor compositions for the flavor chips employed according to the invention, are effective flavoring amounts of at least one member selected from the group consisting of buttery flavors, vanilla flavors, cream dairy flavors, caramel-like flavors, and other flavors associated with *freshness*. To some extent these flavors and their perceptions overlap, *but the test for whether one is present in amounts sufficient for any of these flavor effects will be best based upon suitable instrumentally derived data (e.g., gas chromatography) and expert flavor panel evaluation.* (Emphasis added)

Thus, appellants have provided a test, which is of the type normally employed in food science. An expert panel is given a standard of fresh flavor and asked to score samples based on their actual smell and taste. The same samples and standards are also measured by gas chromatography, or the like, for samples determined to have a fresh aroma by the expert panel. In this way, the actual amounts necessary for the perceived freshness perception can be calibrated in a

particular product are routinely determined. Testing of this kind has become highly refined in food science due to the need to compensate for variation in the strength of flavors from various suppliers and the effects, both physical and chemical, on the flavors by processing and formulation variables. Thus, it is not possible for an invention dealing with inherently subjective measurements to be more objective than to describe the type of tests found effective for quantifying data with regard to them, and those skilled in the art are well equipped to determine the meaning of the terms from the specific examples and the indication of the type of testing described above.

Accordingly, the invention is defined in terms having meaning to those skilled in the art.

**C. The Claims Define an Invention That Would Not Have Been
Obvious to the Person of Ordinary Skill in the Art.**

Claims 1-25 have also been rejected under 35 U.S.C. § 103(b) as unpatentable over Haynes, *et al.*, in view of the “Original Chocolate Chip Cookies Recipes” reference (hereinafter, Cookies Recipes). The examiner’s reasoning trivializes appellants’ improvements and does not provide a sound legal basis for denying them a patent based on obviousness.

The examiner contends that if “different types of chip are added to cookies and the flavor of some chips are enhanced over the other, then the benefit of extending freshness will occur whether or not it is disclosed.” The examiner explains:

For example, the chips disclosed by Haynes *et al* are enhanced flavored chip; if such chips are used with regular chocolate chips, then some chips will have more flavoring composition over the other chips.

It remains, however, that no reference specifically teaches the proposed combination claimed and the invention is productive of an unexpected result. It is respectfully submitted that this is not an appropriate case for looking at the inherent result of an untaught combination as obvious. Indeed, the invention is in part determining that the novel combination should be prepared and in part the discovery that once prepared it provides a solution to an old problem that would not have been obvious to a person skilled in the art at the time the invention was made. In the present fact situation, the references do not teach or suggest the specific combination for any purpose, much less appellants' improvement.

The examiner also states that the "claims do not set how much greater is the concentration of the enhanced chips over the other chips; thus, any minute amount will be considered as greater amount." This point is believed not supportive of a finding of obviousness in this case, because the amounts are described as different and that the added flavor "...be in a concentration greater than present in the basecake and other of said chips, to supply to the basecake during storage over time at least one flavor composition effective to extend freshness perception..." This is a measurable difference.

Further to the above point, claims 3-5, 8-20 and 23, each are further distinguished in that they contain limitations to chip size differentiation in addition to flavor enhancement in the smaller of the chips. This further point of novelty makes the conclusion of obviousness even more remote from the meaning one skilled in the art would have associated with the multiplicity of choices made possible by the references. There is no motivation for using different flavor concentrations in specific of differently sized chips for any purpose, much less for appellants' objectives.

The examiner also states that appellants' assertions regarding the length of storage stability is not commensurate with the scope of the claims. However,

appellants' results summarized in Figure 2 show that vanilla flavor added to small chips can stabilize the flavor of the crumb portion for 26 weeks, *i.e.*, about six months. This is a very real and substantial improvement when compared to the flavor loss that would be expected from the data summarized in Figure 1. The invention is highly effective in achieving a result the prior art did not know how to approach.

The prior art is silent on the points deemed obvious in the Office Action and provides no incentive to optimize because there is no theory or reason for optimizing. Thus, again, the results of the invention do not naturally flow from the prior art.

Conclusion

Appellants have made a significant advance in the art of cookie production technology. The invention is described in terms that clearly distinguish from the prior art of record. Accordingly, reversal of all rejections and allowance of all claims are believed in order.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Thaddius J. Carvis", is written over a horizontal line.

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8. Claims Appendix

APPEALED CLAIMS

1. (Amended) A process for preparing cookies containing chips in a basecake which is subject to diminished fresh flavor after storage, the cookies being formulated to have an extended shelf life, comprising:

preparing a cookie dough for baking into a basecake; and

adding to the dough a mixture of chips comprising sugar in a fat matrix, and at least some of said chips are enhanced flavor chips comprising at least one added flavor composition which extends fresh-baked cookie flavor otherwise diminished by storage in a concentration greater than present in the basecake and other of said chips, to supply to the basecake during storage over time at least one flavor composition effective to extend freshness perception for the cookie basecake.

2. (Original) A process according to claim 1, wherein the larger chips are chocolate chips.

3. (Original) A process according to claim 1, wherein the smaller chips have a count per pound of greater than about 7,500 and the larger chips have a count per pound of less than about 7,500, and wherein the weight ratio of the average weight of the

smaller chips on a number average to the weight of the larger chips on a number average is from 1:2 to 1:25.

4. (Original) A process according to claim 3, wherein the smaller chips have a count per pound of within the range of from about 10,000 to about 20,000 and the larger chips have a count per pound of from about 500 to about 6,000.

5. (Original) A process according to claim 1, wherein the smaller chips comprise at least 10% by weight of the chips present in the dough and wherein the larger chips are employed in an amount sufficient to provide a visual awareness that the cookies contain chips.

6. (Amended) A process according to claim 1, wherein the added flavor composition for the enhanced flavor chips comprises an effective flavoring amount of at least one member selected from the group consisting of buttery flavors, vanilla flavors, cream dairy flavors, caramel flavors, and other flavors associated with freshness.

7. (Original) A process according to claim 6, wherein the added flavor composition comprises at least one member selected from the group consisting of acetoin, acetol, acetyl methyl carbinol, bezaldehyde, butyl butyryl lactate, butyric acid, caproic acid, caramel color, delta decalactone, diacetyl, dihydro coumarin, dimethylsulfide,

ethyl butyrate, ethyl vanillin, gamma undecalactone, gamma nonalactone, heliotropin, lemon oil, lipolized butter fat, maltol, maple lactone, oil of nutmeg, vanilla bean extract, vanillin and mixtures of two or more of these.

8. (Amended) A cookie containing chips in a basecake, which is subject to diminished fresh flavor after storage, the cookies being formulated to have an extended shelf life, comprising:

a baked cookie dough containing therein a mixture of chips of different sizes, some small and some larger, said chips comprising sugar in a fat matrix, and at least some of said smaller chips are enhanced flavor chips comprising at least one added flavor composition in a concentration greater than present in the larger chips, to supply to the basecake during storage over time at least one flavor composition effective to extend freshness perception for the cookie basecake.

9. (Original) A cookie according to claim 8, wherein the enhanced flavor chips are chocolate chips having a pH within the range of from about 7.2 to 8.2.

10. (Original) A cookie according to claim 8, wherein the smaller chips have a count per pound of greater than about 7,500 and the larger chips have a count per pound of less than about 7,500.

11. (Original) A cookie according to claim 10, wherein the smaller chips have a count per pound of within the range of from about 10,000 to about 20,000 and the larger chips have a count per pound of from about 500 to about 6,000.

12. (Original) A cookie according to claim 8, wherein the smaller chips comprise at least 10% by weight of the chips present in the dough and wherein the larger chips are employed in an amount sufficient to provide a visual awareness that the cookies contain chips.

13. (Amended) A cookie according to claim 8, wherein the added flavor composition for the smaller flavor chips comprises an effective flavoring amount of at least one member selected from the group consisting of buttery flavors, vanilla flavors, cream dairy flavors, caramel flavors, and other flavors associated with freshness.

14. (Original) A cookie according to claim 13, wherein the added flavor composition comprises at least one member selected from the group consisting of acetoin, acetol, acetyl methyl carbinol, bezaldehyde, butyl butyryl lactate, butyric acid, caproic acid, caramel color, delta decalactone, diacetyl, dihydro coumarin, dimethylsulfide, ethyl butyrate, ethyl vanillin, gamma undecalactone, gamma nonalactone, heliotropin, lemon oil, lipolized butter fat, maltol, maple lactone, oil of nutmeg, vanilla bean extract, vanillin and mixtures of two or more of these.

15. (Amended) A process for preparing cookies containing chips in a basecake, which is subject to diminished fresh flavor after storage, the cookies being formulated to have an extended shelf life, comprising:

preparing a cookie dough; and

adding to the dough a mixture of chips of different sizes, at least 30% by weight of the chips present in the dough being small and some larger chips, said larger chips being employed in an amount sufficient to provide a visual awareness that the cookies contain chips, said chips comprising sugar in a fat matrix, wherein the smaller chips have a count per pound of greater than about 7,500 and the larger chips have a count per pound of less than about 7,500, and at least some of said smaller chips are enhanced flavor chips comprising at least one added flavor composition in a concentration greater than present in the larger chips, said flavor comprising at least one member selected from the group consisting of buttery flavors, vanilla flavors, cream dairy flavors, caramel flavors, and other flavors associated with freshness, to supply to the basecake during storage over time at least one flavor composition effective to extend freshness perception for the cookie basecake.

16. (Original) A process according to claim 15, wherein the enhanced flavor chips are chocolate chips having a pH within the range of from about 7.2 to 8.2.

17. (Original) A process according to claim 15, wherein the smaller chips have a count per pound of within the range of from about 7,500 to about 15,000 and the larger chips have a count per pound of from about 500 to about 7,500, and wherein the weight ratio of the average weight of the smaller chips on a number average to the weight of the larger chips on a number average is from 1:2 to 1:25.

18. (Original) A process according to claim 15, wherein the added flavor composition comprises at least one member selected from the group consisting of acetoin, acetol, acetyl methyl carbinol, bezaldehyde, butyl butyryl lactate, butyric acid, caproic acid, caramel color, delta decalactone, diacetyl, dihydro coumarin, dimethylsulfide, ethyl butyrate, ethyl vanillin, gamma undecalactone, gamma nonalactone, heliotropin, lemon oil, lipolized butter fat, maltol, maple lactone, oil of nutmeg, vanilla bean extract, vanillin and mixtures of two or more of these.

19. (Amended) A cookie containing chips in a basecake, which is subject to diminished fresh flavor after storage, the cookies being formulated to have an extended shelf life, comprising:

a baked cookie dough containing therein a mixture of chips of different sizes, at least 10% by weight of the chips present in the dough being small and some larger chips, wherein said larger chips are employed in an amount sufficient to provide a visual awareness that the cookies contain chips, said chips comprising

sugar in a fat matrix, wherein the smaller chips have a count per pound of greater than about 7,500 and the larger chips have a count per pound of less than about 7,500, and at least some of said smaller chips are enhanced flavor chips comprising at least one added flavor composition in a concentration greater than present in the larger chips, said flavor comprising at least one member selected from the group consisting of buttery flavors, vanilla flavors, cream dairy flavors, caramel flavors, and other flavors associated with freshness, and wherein the weight ratio of the average weight of the smaller chips on a number average to the weight of the larger chips on a number average is from 1:2 to 1:25, to supply to the basecake during storage over time at least one flavor composition effective to extend freshness perception for the cookie basecake.

20. (Amended) A cookie according to claim 19, wherein the chips are chocolate chips, the smaller chips have a count per pound of within the range of from about 7,500 to about 15,000 and the larger chips have a count per pound of from about 500 to about 7,500, and the flavor comprises at least one member selected from the group consisting of acetoin, acetol, acetyl methyl carbinol, bezaldehyde, butyl butyryl lactate, butyric acid, caproic acid, caramel color, delta decalactone, diacetyl, dihydro coumarin, dimethylsulfide, ethyl butyrate, ethyl vanillin, gamma undecalactone, gamma nonalactone, heliotropin, lemon oil, lipolized butter fat, maltol, maple lactone, oil of nutmeg, vanilla bean extract, vanillin and mixtures of two or more of these, and wherein the weight ratio of the average weight of the

smaller chips on a number average to the weight of the larger chips on a number average is from 1:2 to 1:25.

21. (Twice Amended) A process for preparing cookies comprising a basecake, which is subject to diminished fresh flavor after storage, the cookies being formulated to have an extended shelf life, the process comprising: preparing a cookie dough comprising at least one added flavor; and adding to the dough small enhanced flavor chips, said chips comprising said at least one added flavor composition in an amount effective to extend the shelf life of the cookie by migrating from the chip to the a base cake portion formed by baking the dough, to supply to the basecake during storage over time at least one flavor composition effective to extend freshness perception for the cookie basecake.

22. (Original) A process according to claim 21, wherein the small chips have a count per pound of at least about 7,500 per pound, and wherein the weight ratio of the average weight of the smaller chips on a number average to the weight of the larger chips on a number average is from 1:2 to 1:25.

23. (Twice Amended) A cookie containing chips in a basecake, which is subject to diminished fresh flavor after storage, the cookies being formulated to have an extended shelf life, comprising: a continuous cookie base cake having dispersed therein a mixture of chips of different sizes, some small and some larger, and at

least some of said small chips comprising at least one flavor in a concentration greater than normally employed in flavor chips, to supply to the basecake during storage over time at least one flavor composition effective to extend freshness perception for the cookie basecake.

24. (Original) A cookie according to claim 23, wherein the small enhanced flavor chips have a count per pound of at least about 7,500 per pound, and wherein the weight ratio of the average weight of the smaller chips on a number average to the weight of the larger chips on a number average is from 1:2 to 1:25.

25. (Original) A cookie according to claim 24, wherein the enhanced flavor chips are chocolate chips having a pH within the range of from about 7.2 to 8.2.

9. Evidence Appendix

There is no evidence outside of the specification submitted and relied upon.

10. Related Proceedings Appendix

There are no related proceedings.